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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Amendment of the Commission's Rules
Regarding Installment Payment Financing for
Personal Communications Services (PCS)
Licensees

Docket No. 97-82

**SPRINT CORPORATION
PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429 of the Federal Communications Commission's ("FCC" or "Commission") rules, Sprint Corporation¹ ("Sprint") submits the following Petition for Reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.²

In response to requests for debt relief from a number of C Block auction winners, the Commission established three options for licensees seeking relief from their payment commitments to the U.S. Government.³ For two of the options, disaggregation and

¹ Sprint Corporation holds a 40% general and limited partnership interest in Sprint Spectrum, L.P. which holds 30 A and B Block Personal Communications Service ("PCS") licenses. In addition, Sprint holds 160 D and E Block licenses through its wholly-owned subsidiary SprintCom, Inc.

² Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97-82, FCC 97-342 (Oct. 16, 1997) ("Second R&O").

³ See *Second R&O* at ¶5. These options are: (1) disaggregation (any C Block licensee may disaggregate one-half of its spectrum, *i.e.*, 15 MHz of its 30 MHz, and surrender such spectrum to the Commission for reauction); (2) amnesty (any C Block licensee may surrender all of its licenses for forgiveness of all outstanding debt); and (3) prepayment (any C Block licensee may use 70% of its total down payments for the licenses that it wishes to surrender as a credit toward prepayment of any of its remaining licenses on

(Footnote continues on following page.)

prepayment, the Commission will not permit licensees to bid in the reauction or otherwise reacquire the same spectrum that they surrendered under the debt relief provisions. The Commission, however, placed no limitations on the ability of licensees that select the amnesty option to participate in the reauction or acquire the same spectrum that they surrendered.⁴ The Commission provides no rational basis for this exception for licensees choosing the amnesty option and, indeed, there is none. This exception to the general restriction against licensee participation in reauction and reacquisition of surrendered spectrum undermines the Commission's rules and the integrity of the auction process, discriminates against licensees that have fulfilled their commitments and will unjustly enrich licensees that select the amnesty option and later bid for the same spectrum at a likely discount. Because the exception is unexplained and unsupported by the record, it is not the result of rational decision-making and must be reconsidered.

I. The Amnesty Option Is Discriminatory and Will Result in Unjust Enrichment

In deciding that C Block licensees choosing disaggregation or prepayment may not reacquire surrendered licenses in a subsequent auction, the Commission expressly noted that bidding in a reauction would unjustly enrich those licensees and discriminate against other licensees and auction participants.⁵ Reacquisition of spectrum by licensees choosing amnesty, however, is equally likely to have these same effects.

(Footnote continued from previous page)

a major trading area basis, at face value of the note). Licensees also may choose to continue under their existing debt obligations. *Id.*

⁴ Under the "build out" exception to the amnesty option, licensees are permitted to pick and choose as to which licenses are retained and which are returned. *Second R&O* at ¶ 57. In this regard, amnesty is no different from the disaggregation and prepayment options.

⁵ Sprint does not disagree with the Commission's determination that C Block licensees that surrender some of their spectrum may bid in subsequent auctions of other licenses not involving that same spectrum

Notably, C Block licensees choosing amnesty may find that forfeiture of their down payments, which are set at five percent of their total bid prices, will be more than offset by the steep discounts at which that same spectrum likely will be reacquired in a subsequent auction. By gaming the system in this way, a licensee may profit substantially from its failure to live up to the commitments it undertook when it won licenses in the original auction.

This result not only enriches defaulting licensees unjustly, but unfairly discriminates against those entities, including other C Block licensees, that have made timely license installment payments or dropped out of the auctions when the bidding exceeded their financial capability. The amnesty option also is unfair to C Block licensees that are prevented by contractual or service obligations from selecting the amnesty option, and therefore lack the same opportunity to restructure and refine their business plans to reduce their debt obligations.⁶

II. The Amnesty Option Undermines the Integrity of the Auction Process

Although the Commission intended that the relief options offered to C Block licensees maintain the integrity of the Commission's rules and auction processes,⁷ the amnesty option undermines the auction process by encouraging participants to bid without regard to financial ability or market realities, in the knowledge that they can surrender their licenses if their bids prove to be imprudent and then rebid for the same spectrum at a likely discount in a reauction. By permitting defaulting licensees to abandon spectrum and then reacquire it, likely at a discount, the Commission undermines the credibility of its auction

⁶ See e.g., DigiPH Comments at 2.

⁷ *Id.* ¶2.

process by granting dramatic debt reduction of the kind it expressly claims to have denied.⁸ If bidders are not deterred from distorting the auction process in this way, other participants will not safely be able to rely on the Commission's spectrum auction rules in future auctions.

III. Conclusion

As Sprint previously has pointed out, it is not in the public interest for the Commission to grant post auction relief from its competitive bidding rules and policies. Each auction applicant certified to the Commission, prior to participating in the auctions, that it was financially qualified to acquire PCS licenses and construct and operate PCS systems.⁹ If the Commission grants relief from the consequences of imprudent bidding decisions, it will encourage speculation in FCC licenses, promote inefficient market entry by entities that ultimately may not survive, and discriminate against those entities that heeded the Commission's warnings and participated only to the extent of their financial abilities.

To the extent that the Commission does elect to relieve licensees from their obligations, it should do so in a way that prevents unjust enrichment and minimizes discrimination. Accordingly, all debt relief offered C Block licensees should prohibit reacquisition of the same licenses that they have surrendered as a condition of obtaining

⁸ See *Second R&O* at ¶19 ("Similarly, we do not wish to adopt proposals that result in a dramatic forgiveness of the debt owned. . . [W]e believe that is [sic] would be very unfair to other bidders, and would gravely undermine the credibility and integrity of our rules.")

⁹ See 47 C.F.R. §1.2105(a)(2)(v).

relief from their obligations. The Commission should reconsider and modify its *Second R&O* accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **PETITION FOR RECONSIDERATION**, has been furnished, via hand delivery on this 24th day of November, 1997, to the following:

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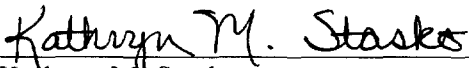
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